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SUCCESSION OF COGNATES UNDER THE MITAKSHARA.

II.

In page 699 of his book on Inheritance, referring to the diagram therein given, Sarvadhikari re-affirms the same proposition evidently forgetting that if *Satatapa's* text is to be taken as exhaustive of the lines through which alone the connection of heritable *Bandhus* should be established, *Bandhus* in one's own descending line who are his nearest *Bandhus* will have to be excluded as none of the nine *Bandhus* is in his own descending line.

At page 702 he brings together all the texts of the Mitakshara upon which the heritable rights of the *Bandhus* is based and by which their order of succession is regulated, and at pages 704 and 705 he mentions the ancestors from whom descent should be traced; but at page 706 he lays down a rule of exclusion reiterating that cognate descendants of each of the classes are excluded from inheritance when (1) the deceased or (2) the deceased's ancestor is not in the line of the maternal grandfather either of the deceased or of the deceased's father or mother, and that a cognate ascendant of the deceased is also excluded when he does not belong to the line of the maternal grandfather of the deceased or of his father or mother. He thereupon frames three tables of *Bandhus* under the Mitakshara in a sheet between pages 712 and 713 in which I, split into Ia and Ib, shows one's own cognate kindred *ex-parte paterna* and *ex-parte materna*, and II shows *Pitru-bandhus*, father's cognate or cognate through the father, and III shows *Matru-bandhus*, mother's cognate or cognate through the mother. In these tables Ia, Ib, II

and III the father's paternal aunt's son is included in the first class Ia and marked S_1, the son of B's daughter. The maternal uncle is included in the first class in table Ib and marked X_1, the son of A, the father of the mother m. One of the most formidable objections to the construction of these tables that presents itself at the very outset is that the father's paternal aunt's son who is expressly included in the second class of *Bandhus* in *Satatapa's* text is elevated by Sarvadhikari to the first class high up and higher than the maternal uncle's son who is in the first class. Sarvadhikari of course is fully aware of the weight of this objection and tries to get over it at page 727 as follows :—"It would seem at first sight "that the father's father's sister's son should according to Mitakshara "be postponed to the maternal aunt's son, etc., and the mother's "father's sister's son to father's *Bandhus*. A little consideration, "however, will show that such could not have been the meaning of "Mitakshara. Both father's paternal aunt's son and the mother's "sister's son are two degrees removed from a common ancestor. "But the common ancestor is an agnate *Sapinda* in the one case and "a cognate *Sapinda* in the other. According to the general principle "of succession in the Mitakshara law a cognate descendant two "degrees removed of an agnate *Sapinda* should be preferred to a "cognate descendant two degrees removed of a cognate *Sapinda*. "It should be remembered that when we apply the rule of pro-"pinquity we should be careful in noting that the degrees of "propinquity are counted in ascending lines not from the proposi-"tus, but from a common ancestor from whom the line diverges. "This is the Hindu idea of propinquity and is materially different "from the western idea of nearness. Within a well-defined range "the degrees of *Sapinda* relationship are allowed to be heritable "and the distance from the common ancestor is the test of pro-"pinquity. If the system of computing the degrees of kindred "obtaining in the west be applied to the Indian system, it will "upset all the principles regulating Hindu succession and will make "confusion worse confounded. The principle of computing these "degrees has already been explained to you and if you apply that "principle in the case before you, you will find that even by the "rule of affinity and propinquity, the father's paternal aunt's son "should take precedence of the mother's brother or the mother's "sister's son."

The subsequent remarks also ending with page 735 may with advantage be referred to. The fallacy on which the whole reasoning is based in the above extract is easily exposed. He says that the author of the Mitakshara could not have really meant what his language clearly imports. He says that the father's paternal aunt's son and the mother's brother's son are two degrees removed from a common ancestor. The first observation to be made here is that the common ancestor of the propositus and of his father's paternal aunt's son is one person, and the common ancestor of the propositus and of the mother's brother's son is quite a different person. No doubt the two claimants are two degrees removed from the respective common ancestors; but the propositus is four and two degrees removed from the respective common ancestors. Here, therefore, is a case in which the propositus and the adverse claimants are not descended from a common ancestor. No doubt if they are all descended from a common ancestor and the claimants are equally removed from that ancestor who is an agnate *Sapinda* to the one and a cognate *Sapinda* to the other, the proposition advanced by Sarvadhikari may hold good; but when the common ancestors are different and the adverse claimants are both cognate *Sapindas* of the propositus, though the adverse claimants may be equally removed from the respective common ancestors, the propositus is not removed an equal number of degrees from the respective common ancestors; for, the common ancestor of himself and his father's paternal aunt's son is three degrees removed from him, but the common ancestor of himself and his maternal uncle's son is only two degrees removed. In other words the maternal uncle's son is a descendant two degrees removed from the common ancestor who is two degrees removed from the propositus, and the father's paternal aunt's son is also two degrees removed from a common ancestor who is three degrees removed from the propositus.

Subject to what may be urged on the score of the former being the cognate ancestor of the propositus and the latter being an agnate ancestor, there can possibly be no doubt that of the two collaterals one of whom is descended of a nearer ancestor and the other of whom is descended from a remoter ancestor, both being equally removed from the respective ancestors, the former certainly is nearer of kin to the propositus than the latter.

Let us now consider how this can be affected by the fact that the paternal great-grandfather is an agnate and the maternal grandfather is a cognate of the propositus.

Sarvadhikari says that under the Mitakshara Law a cognate descendant two degrees removed of an agnate *Sapinda* should be preferred to a cognate descendant two degrees removed of a cognate *Sapinda*. What is the general principle of succession on which the above rule is founded he does not attempt to explain; but the principle he refers to must be that, under the Mitakshara, agnates, however remote, are preferred to cognates, however near. But as between cognates themselves each of whom *ex-hypothesi* is not an agnate of the propositus, there is nothing whatever in the Mitakshara law or the principle of affinity or propinquity which would give priority to a cognate descendant of an agnate ascendant over an agnate or a cognate descendant of a cognate ascendant. Under the Dayabhaga Law no doubt the principle is that among those who offer oblations of the same kind, one who offers them to the paternal ancestors is preferred to one who offers them to the maternal ancestors of the deceased. According to this the father's paternal aunt's son is preferred to the maternal uncle. If, however, Mr. Mayne is right in suggesting that this rule of preference cannot prevail if the number of oblations offered by the respective claimants in which the propositus participates is unequal, it is by no means clear why even under the Dayabhaga Law the maternal uncle should be postponed to the father's paternal aunt's son. Mr. Mayne also adds that if the principle be that a man who presents a greater number of oblations to persons who are maternal ancestors of the propositus is inferior to one who presents a lesser number to persons who are the paternal ancestors of the propositus, then the principle is undoubtedly disregarded both by the Dayabhaga and the Dayakrama Sangraha.(1) If, however, it only goes to this extent that where the number is equal, those who present offerings to the paternal ancestors are preferred to those who present them to the maternal ancestors, then the whole course of descent is logical and consistent. The priority, therefore, given to the father's paternal aunt's son over the maternal uncle by the Dayabhaga School is not the result of

(1) Mayne's Hindu Law and Usage and pr 536.

the operation of any general rule or principle of spiritual benefit, but the result of express provision made to that effect in chapter XI, section VI, placitum 12 of Dayabhaga,(1) though no doubt the author bases it on the theory of religious efficacy. However this may be, it is not pertinent to a consideration of the question arising under the Mitakshara School.

In the illustration given by Sarvadhikari, he refers to what according to him is an apparent postponement of the father's paternal aunt's son to the maternal aunt's son of the propositus, and states that both are two degrees removed from a common ancestor and the descendants are cognate descendants of the two ancestors. He includes the maternal uncle and his son in the *etc.*, after the maternal aunt's son, and in the illustration as given above, the mother's brother has been substituted for the mother's sister. If you take the maternal uncle, he is the *agnate* descendant one degree removed of the maternal grandfather of the propositus, *i.e.*, a cognate ascendant two degrees removed; and the father's paternal aunt's son is a *cognate* descendant *two* degrees removed of the father's paternal grandfather who is an agnate ascendant three degrees removed from the propositus. As already explained, when one is an agnate *Sapinda* of the propositus, however remote, extending it may be to the farthest limits of *Samanodakas*, he has priority over the nearest cognate-*Sapinda* removed, it may be only two degrees from the propositus, on the ground that the propinquity in the former case is greater by reason of the transmission of corporeal particles through an unbroken male line. If, therefore, the maternal uncle be opposed by the father's paternal uncle's son instead of the father's paternal aunt's son, the maternal uncle will be nowhere. But the father's paternal aunt's son is no more connected with the propositus by an unbroken male line than the maternal uncle and his sons.

In the case of the father's paternal aunt's son the particles of the common ancestor have no doubt been agnatically transmitted to the propositus, but not so to his daughter's son, *i.e.*, the father's paternal aunt's son. In the case of the maternal uncle the corporeal particles of his father, the common ancestor, have been directly transmitted to his son, *i.e.*, the maternal uncle, but not so to the

(1) Stokes' H. L. B., p. 346.

propositus who is his daughter's son; and even if you take the maternal uncle's sons, it will be the same, the uncle's son being one degree further removed but in the agnate line. When, therefore, you have to determine the relative propinquity of the maternal uncle and the father's paternal aunt's son, the fact of the common ancestor being an agnate ascendant in the one case and a cognate ascendant in the other case cannot affect the principle of propinquity, because the collateral descendant of the common ancestor is a cognate descendant in the one case and in the other case he is an agnate descendant, though it would not make any difference if the latter also were a cognate descendant as in the case of the mother's sister's son, the cognate mentioned in the illustration given by Sarvadhikari. A moment's reflection as to what constitutes affinity, without of course ignoring the principle of Mitakshara, that propinquity is greater between the most distant agnates than between the nearest cognates, will make the matter clear. If you have to determine which of two cognates descended from the propositus or from one and the same ancestor of the propositus is nearer of kin, there will be no difficulty, because the one that is further removed from the propositus in the one case or from the common ancestor in the other case will have less of community of particles with the propositus than the other. But when the two are not descended from the propositus or from a common ancestor of the propositus but from two different ancestors of the propositus, the test of propinquity is to see whether in common between the propositus and one claimant, there is greater community of the particles of the common ancestor than there is between the propositus and the other claimant in respect of the particles of their common ancestor. In other words the question is which of the two ancestors has transmitted the greater proportion of his corporeal particles in common to the respective descendants, *viz.*, the propositus and one claimant on the one hand and the propositus and the other claimant on the other.

If the agnatic connection be intercepted by the intervention of a male who is a stranger to the family, it is immaterial whether that stranger be interposed in the ascending line of the propositus or in the descending line of the common ancestor, the affinity in either case is kept up, though in an attenuated degree, by a

female member who may be either in the ascending line of the propositus or the ascending line of the claimant. When viewed from the standpoint of the propositus, his father's paternal aunt's son is a cognate descendant of an agnate ascendant. But when viewed from the standpoint of the father's paternal aunt's son, the propositus is an agnate descendant of a cognate ascendant. Similarly, in the case of the maternal uncle, from the standpoint of the propositus, he is an agnate descendant of a cognate ascendant, and from the standpoint of the maternal uncle, the propositus is a cognate descendant of an agnate ascendant. The moment the agnate connection is interrupted, it is perfectly immaterial in the determination of propinquity whether it was interrupted in the ascending line of the propositus or in the collateral line or in both. That such was the view taken by Mitakshara is clear from the enumeration and classification of the nine *Bandhus*. Sarvadhikari says that when applying the rule of propinquity "we should be careful in noting that the degrees of propinquity are counted in ascending line not from the propositus but from a common ancestor from whom the line diverges. This is the Hindu idea of propinquity and is different from the western idea of nearness."

This is again altogether fallacious and is the result of misapplying the rule laid down in the definition of *Sapinda* for determining whether a collateral is or is not a *Sapinda* of the propositus to the determination of quite a different question, *viz.*, which of the two collaterals, both of whom are *Sapindas* to the propositus according to the said rule, is nearer of kin. The said rule is that in counting five degrees on the mother's side and seven degrees on the father's side, you must count it from the common ancestor from whom the line diverges when you have to find out whether a collateral in that diverging line is or is not a *Sapinda*. That is to say a collateral is a *Sapinda* if he is not more than five degrees removed from a common ancestor on the maternal side of the propositus or seven degrees removed from a common ancestor on the paternal side of the propositus. Sarvadhikari in referring to the western mode of computation is evidently referring to the civil law which is followed by the English law. According to Canon Law(1) the degree of relationship between two collaterals is expressed by

(1) Williams on Executors, Vol. I, p. 357, Ed. of 1893, para. 127. Lindley's Study of Jurisprudence, Ed. of 1879,

the number of degrees by which the remoter of them is removed from the common ancestor; and the Hindu mode of computation for determining the existence of *Sapinda* relationship between two collaterals is analogous to this. But in determining the relative degrees of propinquity to the propositus of two competing *Sapindas*, there is and can be no difference between the western and the eastern idea of nearness subject of course to such peculiarities as may be due to the difference in the classes of heirs under the two systems of jurisprudence; and it will indeed be strange, if under the Canon Law it were otherwise, *viz.*, a claimant, his father and grandfather 5, 4 and 3 degrees respectively removed from the common ancestor were of equal kinship to the propositus, 7 degrees removed from the common ancestor. Taking, for instance, agnates, how are we to determine which of two agnates of the same class is nearer of kin except by adding the number of degrees as under the Roman system. No doubt agnates may be grouped into different classes of heirs with reference to their being in the ascending line, the descending line, the nearer (*Sapindas* of the Bengal School) the remoter (*Sakulyas* of the Bengal School), and the remotest (*Samanodakas*). But when there is a competition between agnates of each class, their relative degrees of propinquity can be determined only by counting the number of degrees from the propositus to the claimants through the common ancestor or respective common ancestors. This is simply a rule of common sense and not peculiar to any system of jurisprudence, whatever other differences may exist in regard to the agnates, cognates and different classes of heirs. Among cognates of each class the degree of propinquity can be ascertained only in the same way. If two cognates are in two different classes of cognates, no computation of degrees is necessary. As already stated the maternal uncle's son and, therefore, *a fortiori*, though inferentially, the maternal uncle are included in the first class and the father's paternal aunt's son in the second class. There can, therefore, be really no competition between the two as the first class expressly excludes the second class; and even if they should be regarded as being in the same class, *viz.*, cognates without any classification of them into groups, the maternal uncle is four degrees removed from the propositus while the father's paternal aunt's son is six degrees removed from the propositus. The ceremonial law of the Benares School, according to which in the performance of funeral

obsequies and the *Sradha* or annual ceremony of the deceased the maternal uncle and his sons have decided precedence over the father's paternal aunt's sons, affords cogent proof that according to the doctrine of the Mitakshara School the former is nearer of kin to the deceased than the latter.(1) In spite of all the assumptions made by Sarvadhikari and the elaborate and ingenious dissertation on the system of *Bandhus* under the Mitakshara and the attempt to unravel the hidden meaning of the Mitakshara, he is fully alive to Satatapa's text and the commentary thereon by the author of the Mitakshara staring him in the face. He makes the most audacious but futile attempt to retranslate the text, after, as he himself frankly admits, interpolating three words, *viz.*, "etc.," "heirs" and "like." The translation will be found set forth at page 731. But unfortunately even this interpolation and retranslation have not the desired effect. The substance of the text according to his translation is that cognates of the first class must be reckoned as heirs like the cognates in the second class. Just like the cognates in the second class must be reckoned as heirs, the cognates of the third class must be reckoned as heirs. He then begins to annotate his fresh translation at page 732 in a manner most unintelligible and meaningless. Even if one should accept his retranslation and pardon the translator for interpolating in the original three small words, there is nothing in it which would displace and transfer the nine *Bandhus* or any of them from one class to another and the classification remains as intact as in the original translation. Being fully conscious of the futility of his effort to find something in the Mitakshara which does not exist in it to support his preconceived theory and prejudice derived from the Bengal School, he attempts to suggest "another probable explanation of the words 'the father's paternal aunt's son' and 'the mother's paternal aunt's son' occurring in the second and the third series instead of in the first. The explanation is "that the first series may be taken to represent the *Bandhus* through the father and the mother. The second series may be taken to represent the *Bandhus* through the father's paternal and maternal ancestors; and the third, the *Bandhus* through the mother's paternal and maternal ancestors. The members of the first series are heirs in the first instance. In default of them, the members of the second series, and in default of them,

(1) Sarvadhikari, p. 115.

those of the third." So far Sarvadhikari is certainly right and no exception can be taken to his statement. He then says that "the father's paternal aunt's son is connected directly through the father and mediately through the father's grandfather and thus he is the owner's own *Bandhu* as well as the *Bandhu* of his father and thus bears a double relation." Though this is loose and vague, it really does not affect the question at issue. If Sarvadhikari means that the double relation he bears is that he is the *Atma-Bandhu* or the first class *Bandhu* of the father, but that he is a *Pitru-Bandhu* or the second class *Bandhu* of the propositus, he is certainly right. But what he really means it is not easy to conjecture. He then winds up by saying, "as the owner's own *Bandhu ex-parte paterna* the father's paternal aunt's son has already been acknowledged as an heir of the first class ...."

"The father's paternal aunt's son then is included in the second series simply because he bears a double relation. He partakes of the heritable qualities of the first class as well as of the second class." Why on earth he should not be included in the first series if he is really entitled to come in as an heir of the first series (*Atma-Bandhus* of the propositus) it is simply impossible to conceive. The fact of his bearing a double relation, *viz.*, of his being not only a *Pitru-Bandhu* of the propositus but also an *Atma Bandhu* of the father is no reason for degrading him to the second class when succession has to be traced to the propositus. It is because he is an *Atma-Bandhu* of the father that he finds a place in the second class and because he is not an *Atma-Bandhu* of the propositus he finds no place in the first class. In conclusion, however, he is frank enough to admit that his second explanation cannot be considered to be so satisfactory as the other one given by him based upon his re-translation of *Satatapa's* text.

Another recent Bengal writer on Hindu Law, Mr. Siromani, is equally anxious with Rajkumar Sarvadhikari to twist and distort the Mitakshara so as to assimilate it to the Bengal School and uphold the right of the cognates related through the daughters of the family extending to the great great-grandfather as against the cognates, the maternal uncle and the rest, who are connected with the propositus through his mother. He adopts in entirety the tables of *Bandhus* constructed by Rajkumar Sarvadhikari and the

conclusions arrived at by him.(1) But he apparently repudiates his reasoning and says that he overlooked the distinction between the words *Bandhu* and *Bandhava* which latter word occurs in the text of Satatapa and that by interpolating certain words in that text he changed its meaning altogether. He says that "though the words *Bandhu* and *Bandhava* mean one and the same thing, yet *Bandhava* literally means the son of a *Bandhu* and *Bandhava* is not unfrequently used to denote a cognate brother as we say."

The word which occurs in Yagnyavalkya's text which is the subject of *Vijnanesvara's* Commentary on the subject of inheritance is "*Bandhu,*" and the word which occurs in Satatapa's text which is cited in support of the proposition advanced by *Vijnanesvara* that "*Bandhus*" are of three classes, is "*Bandhava.*" If the author of the Mitakshara understood the word "*Bandhava*" occurring in the said text in the sense in which Siromani says that it is used, *viz.,* as denoting not *Bandhus* generally but sons of *Bandhus* or cognate brothers, he (*Vijnanesvara*) would not have cited it in support of his classification of "*Bandhus*" into three classes. At any rate he would not have relied upon it directly, but explained it by saying that, in the same way as *Bandhu's* sons are divided into *three* classes, so should *Bandhus* themselves be divided. There is, therefore, no foundation for supposing that Satatapa used the word *Bandhava* otherwise than as synonymous with *Bandhus* and much less for supposing that the author of the Mitakshara understood the word *Bandhava* in the restricted sense of cognate brothers. Siromani's conclusion is that the enumeration of the *nine Bandhus* is not simply illustrative but exhaustive of the class of *Bandhavas* in the sense in which he would have us understand that term. That Siromani is clearly wrong in considering that the text of Satatapa is an exhaustive list of *Bandhavas* or cognate brethren is obvious by the omission to specify in the third class the mother's paternal uncle's son who is as much a cognate brother as the mother's paternal aunt's son who is specified. Thus it will be seen that he wants to throw overboard the decisions of the Privy Council and of the Calcutta High Court and in fact of all the High Courts, that the enumeration in Satatapa's text is illustrative and not exhaustive, by suggesting this wire-drawn distinction between *Bandhus* and *Bandhavas* and deducing

(1) Siromani on Hindu Law, p. 322.

therefrom a theory that it is exhaustive of *Bandhavas* and that none of the persons therein mentioned is a *Bandhu*. Immediately after citing Satatapa's text the author of the Mitakshara says in placitum 2, section 6, chapter II, that the order in which the *three* classes are therein mentioned is indicative of the order in which the three classes will succeed one after another. In this view it becomes immaterial whether "*Bandhavas*" is used in the sense of *Bandhus* generally or of sons of *Bandhus*. Here the competition is between two persons specifically named in the 1st and 2nd classes respectively. At page 301 he says "cognates related through the daughters of the family should be called *Atma-Bandhus*, for there is no reason whatever for calling them father's *Bandhus*." This is simply an assumption founded on no reason or rhyme except the preconceived notion of Siromani and Rajakumar Sarvadhikari, the two Bengal writers. In the face of the express and singularly lucid text of the Mitakshara it is not only idle but too late in the day to attempt to get rid of it by some fanciful interpretation of it, or by suggesting certain speculative principles deducible from some occult intention of the author of the Mitakshara which is clearly opposed to his intention as declared.

JURISPRUDENCE.

GROUNDS OF CRIMINAL JURISDICTION.

II.

Of the several theories which have been mentioned as to the grounds of criminal jurisdiction, the only one which would appear to be based upon sound legal principles is the subjective territorial theory. The idea of sovereignty is inseparably connected with territory, and every Sovereign State has, *eo nomine*, exclusive authority within the territories owned by it. Conversely, such a State has no power within the territories of another Sovereign State. These two propositions are laid down by Fœlix (Droit Int. Privé, §§ 9 and 10), cited by Wheaton (Int. Law, § 78), in the following words:—"Every State possesses the power of regulating the conditions on which the real or personal property, within its territory, may be held or transmitted; and of determining the state and capacity of all persons therein, as well as the validity of the contracts and other acts which arise there, and the rights and

obligations which result from them; and finally of prescribing the conditions on which suits at law may be commenced and carried on within its territory.

"Secondly, no State can, by its laws, directly affect, bind or regulate property beyond its own territory, or control persons who do not reside within it, whether they be native-born subjects or not. This is a consequence of the first general principle; a different system, which would recognize in each State, the power of regulating persons or things beyond its territory, would exclude the equality of rights among different States, and the exclusive sovereignty which belongs to each of them."

It may be said that the exclusive territorial jurisdiction of a State gives complete control over all foreigners, while they remain on its soil, even for acts done by them before their arrival there; but this is, as Mr. Hall points out "in reality to set up a claim to concurrent jurisdiction with other States, as to acts done within them, and so to destroy the very principle of exclusive territorial jurisdiction to which the alleged rights must appeal for support." (Int. Law., 3rd Edn., p. 209).

Viewing the matter in a different aspect, we arrive at the same result. According to Lord Coke (7 Co. Rep., 6 *a*,) protection and allegiance are correlative—a doctrine which, as we have seen, was approved and emphasised in the case of *R.* v. *Keyn.* In other words, it is only for acts done when the person doing them is enjoying the protection afforded by a State, that he is amenable to its jurisdiction. Even where a subject of one State travels into another, the protection of the former ceases and that of the latter begins, although the former might solicitously watch if the full measure of such protection is afforded by the latter. It will thus be seen that the other theories are all radically defective, as violating the sovereignty of Foreign States. The theory of general supervision is adopted by so few States and under such restrictions and limitations, that there is little difficulty in dismissing it without further notice. The theories of allegiance and self-protection are, besides, incomplete, as the former is unable to account for the admitted practice of exercising jurisdiction over resident aliens, and the latter for that of punishing offences against such persons.

The self-protection and objective territorial theories are also untenable, as they are based upon a principle of international anarchy, which repudiates the existence of law and comity amongst the nations, and assume that it is necessary for each State to take the law into its own hands to punish offences against itself, its subjects, or other persons resident within its borders. The most that can be said for them is that expediency should prevail over principle. But even as regards expediency, the advocates of these theories forget that every State lies under a responsibility, well-recognized by international law, towards other States, for all acts or omissions taking place within its borders by which another State or subjects of the latter are injuriously affected. (Hall, Int. Law, p. 214). As illustrations of the express recognition of this responsibility by States, I may instance Ss. 125, 126 and 127 of the Indian Penal Code, dealing with waging war or committing depredations on Asiatic powers, and the provisions in Ch. XII. of the same Code dealing with the counterfeiting, etc., of foreign coin, as also the similar provisions of the English law. (Stephen's Digest of Cr. Law, Arts. 99—102; 372, 373 and 375.) If this responsibility is not fulfilled by a State, recourse must be had to diplomatic action to enforce its fulfilment, and if that is of no avail, to reprisals, and ultimately to war. If the offender is subsequently arrested in the State which has been wronged, after diplomatic action has failed to secure his trial in the other State, he may be tried in the former State, not, indeed, under the law, but as a matter above the law, and as an act of State or of war. Cases might be imagined in which it would be dangerous to allow one State to arrogate to itself jurisdiction over acts committed in another State, by which the former is or fancies itself to be wronged. A man may be expected to know the laws of the country in which he lives but not those of other countries; but, if these theories were to hold good, it might happen that a man in good faith doing, in his own country, what is innocent there, may unconsciously be committing an offence against another State, for which he would be liable to be arrested by its authorities the moment he unwittingly sets foot on its soil. Especially is this danger great in the case of political offences—for their category is a variable one, and they are, besides, a class of acts for which States are very jealous of abandoning their subjects to the tender mercies of other States.

The fact that the arrest of the offender immediately after the commission of the offence can take place only in the State in which he is at the time of its commission, seems to give a sort of natural right to it to try for that offence. If the State which is wronged wishes to try him for that offence, it must either request the former to extradite him, or wait until he chances to set foot on its soil. Thus the self-protection and objective territorial theories can only have a fitful and precarious operation, unless with the consent and under the delegation of the State having jurisdiction under the subjective territorial theory.

It is said, again, on behalf of the objective territorial theory, that the preponderance of testimony is to be found about the place where the offence actually takes effect. [Wharton, Conflict of Laws, p. 700, n (3).] But it ought to be remembered that in criminal law the identity of the offender and his intention are at least as important as the *corpus delicti.* Even granting that there is such a preponderance, that consideration cannot affect a matter which is otherwise clear on principle.

It is to be noted that the advocates of the other theories do not altogether repudiate the subjective territorial theory, but either do not, as we have seen in the United States, take the trouble of disposing of it at all, or, as in other countries, give play to it concurrently with the others. But the exercise of concurrent jurisdiction by two or more States, without the safeguard of a treaty, is always fraught with grave inconveniences—an indecent haste on the part of one State to seize and exercise jurisdiction and diplomatic collisions resulting therefrom; and the possibility of an offender being subjected to more than one trial for the same offence, States refusing to recognize sentences, or much more so, judgments of acquittal passed by other States.

One consequence of the subjective territorial theory is that non-resident aliens are entitled to take advantage of the criminal laws of a country, when offences are committed against them by persons resident in it. This may seem opposed to the principle laid down by the House of Lords in the case of *Jeffreys v. Boosey* (4 H. L. R., 815), where it was held that a non-resident alien was not within the contemplation of the Statute of Anne for the protection

of copyright, and could not have the benefit of copyright in a musical composition first published by him in England. This case has not only been virtually dissented from by Lords *Cairns* and *Westbury* in the subsequent case of *Routledge* v. *Low* (L. R., 3 H. L., 100) before the same House, but the decision in it turned upon the fact, in the words of *Baron Pollock,* that "copyright is altogether an artificial right, not naturally and necessarily arising out of the social rules that ought to prevail among mankind assembled in communities, but is a creature of the municipal law of each country to be enjoyed for such time and under such regulations as the law of each State may direct and has no existence by the common law of England." As criminal laws enforce natural rights and exist by the common law, they do not fall within the ruling in this case. For a case in which the common law right to a trademark has been enforced in India in favour of a non-resident alien see *Badische Aniline and Soda Fabrik* v. *Maneckji Shapurji Katrak,* I. L. R., 17 B., 584.

In insisting so strongly upon the exclusive authority of the subjective territorial theory, it is to be understood that the desirability of making exceptions to it by means of treaties is at the same time, fully recognized. One case, for instance, strikes me as being eminently worthy of being thus excepted—namely, where a domiciled subject of one State goes abroad just to evade a Home law and then returns to it. There may also be several other cases in which policy and expediency require that such exceptions should be made. What is urged is that these exceptions should be made under the safeguard of a treaty and not as a matter of right.

Before leaving this part of the subject, I shall cite the two resolutions passed by the Institute for International Law in 1879 upon the question of criminal jurisdiction. The first proposition, adopted by nineteen votes to seven, ran thus :—" Each State has the right to punish for acts committed outside its territory by foreigners, in violation of its penal laws, when these acts constitute an attack on the social existence of the State, compromising its safety, and *which are not cognizable by the penal law of the country where they take place.*" The second proposition "whether a State can punish a foreigner who commits abroad offences against its laws other than those designated in the previous proposition " was answered in the negative by a majority of seventeen votes to nine.

In the discussion that took place, Professor Westlake strenuously maintained that no State has under any circumstances the right to punish subjects of other States for acts committed by them outside of its territory. (Wharton, Con. of Laws, p. 697, n (1).)

As to the exercise of jurisdiction on the high seas, the practice may broadly be stated thus:—

A. With regard to merchant vessels—

1. Every State has jurisdiction over all persons, whether subjects or foreigners, on board its merchant vessels on the high seas, within or beyond territorial waters, or in any port or river. The British Merchant Shipping Act of 1894, consolidating the former Acts on the same subject, gives jurisdiction, by S. 686, over persons not being British subjects who are charged with having committed any offence on board any British ship *on the high seas.* But this is not exclusive of the common law jurisdiction over foreigners on board British vessels in ports and rivers, whether such foreigners are attached to the vessel (*R. v. Anderson,* L. R., 1, C. C. 161), or not (*R. v. Carr,* 10 Q. B. D., 76).

2. Every State has jurisdiction over its subjects on board foreign vessels on the high seas, within or beyond territorial waters, or in any port or river. By the British Merchant Shipping Act of 1894, S. 686, such jurisdiction is exerciseable when the British subject does not belong to the foreign ship: this would seem to exclude jurisdiction where he does so belong, especially as it is very doubtful whether the common law recognized any jurisdiction over a British subject on board a foreign vessel (Roscoe, Crim. Ev., p. 236).

3. Every State has jurisdiction over all vessels in its ports, harbours and rivers. But it is the distinctive practice of France, to decline to exercise such jurisdiction except in the case of "crimes or lesser offences committed upon or by persons not belonging to the crew, or even by members of it upon each other, provided in the latter case that the peace of the port is compromised." (Hall, Int. Law, p. 199.)

4. As to jurisdiction in territorial waters, it was held by the majority of Judges in *R. v. Keyn,* that there was no usage as to nations having assumed the power of making foreigners on foreign

ships passing through their territorial waters amenable generally to the local criminal law, that jurisdiction had been exercised in such places only in matters connected with navigation, or with revenue, local fisheries, or neutrality, but that there would be nothing wrong or contrary to international law in assuming such a general criminal jurisdiction by means of a Statute. Accordingly, the Territorial Waters Jurisdiction Act, 1878, was passed by the British Parliament asserting sovereignty over British territorial waters and conferring jurisdiction on British Courts over acts done within such waters. But in other countries the old practice of exercising jurisdiction only in respect of the above-mentioned matters and looking upon territorial waters in all other respects as if they were part of the non-territorial seas, continues.

B. With regard to public vessels—

Every State has jurisdiction over all persons on board its public vessels wherever they may be, while, at the same time, every State retains its jurisdiction over its subjects on board foreign public vessels. [Whether the latter proposition holds good in the case of England is doubtful.] So far there is no difference between public and private vessels. But in a port or river or in territorial waters, a foreign public vessel, although subject to the laws of the territorial State in the same manner and to the same extent as a private vessel, enjoys a certain immunity, out of courtesy to the State owning the vessel. The territorial jurisdiction is not exercised, save where the parties concerned are subjects of the territorial State, or an act done on board the vessel takes effect externally to her, or the State owning the vessel voluntarily submits to such jurisdiction. But no entry can be made into the vessel itself for any purpose whatever, without the captain's consent. If there is a violation of the territorial laws, a demand for the surrender of the guilty persons or for redress should be made to the captain and then to the State owning the vessel, followed in extreme cases by its expulsion out of the territory.

C. Every State has jurisdiction to try acts which are piracy *jure gentium* wherever and by whomsoever committed.

The principles on which the above practice is based may be stated thus. In places not within the jurisdiction of any State,

as for instance, the high seas, unless complete lawlessness is to exist, jurisdiction must be exercised either exclusively by each State over persons and property belonging to it, or concurrently with all other States over all persons and property, to whatever country they may belong. Principle and convenience point to the former as the course which is more proper. In such places, person and property are exclusively under the protection of the State to which they belong, as other States are but very little interested in what becomes of them. According to the doctrine already referred to, such State has, therefore, jurisdiction over such persons and property. In other words, each State has jurisdiction over its own subjects on board its own or foreign vessels, and over all persons, subjects or foreigners, on board its own vessels, on the high seas. It will thus happen that when a subject of one State takes passage or service on board the vessel of another, both States have concurrent jurisdiction over him. But the jurisdiction of the State of the vessel is the superior or primary one, while that of the other is inferior or secondary to it. This is well brought out in a case mentioned by Mr. Hall. (Int. Law, p. 252, n (1).) An English sailor on board an American vessel stabbed the mate. On the arrival of the vessel at Calcutta, he was handed over to the police for safe-keeping, but they proceeded to put him on trial before the Calcutta High Court, and obtained a conviction. On the United States Government complaining to the British Government of this assumption of jurisdiction, the latter expressed "its regret that the action of the authorities at Calcutta should have been governed by a view of the law which in the opinion of Her Majesty's Government cannot be supported."

The right of a State to exercise jurisdiction over all vessels in its ports, rivers and territorial waters, is clear on the principle of territorial sovereignty, but this jurisdiction is often not exercised in practice, just as in France it is not exercised even in theory, in matters relating to the internal discipline of the vessel or offences by one of the crew against another when the peace of the port is not affected. In so far as the territorial State refrains from exercising jurisdiction, the jurisdiction of the State of the vessel and with it that of the State whose subject the offender is, revives.

In places not within the jurisdiction of any State, it is clear that neither of the territorial theories can have any application as

such. But the principle of the subjective theory, namely, that protection and allegiance are correlative, rather than that of the objective, has, we have seen, to be called into requisition to explain the existing practice. If the latter were the governing theory, we should expect to find the following variations from the actual practice, as legitimate consequences :—

(1) The jurisdiction over subjects as such on the high seas should be abandoned and only offences committed against them should be made cognizable.

(2) A State would have to take upon itself to punish injuries done to its subjects on board foreign vessels by foreigners.

(3) The distinction between territorial and non-territorial waters, for jurisdictional purposes, should be given up. The three-mile limit is fixed for the reason that persons from within that limit may by means of cannon, etc., easily molest persons and property on shore, and that it is desirable for a State to protect itself against such acts by having jurisdiction over them. But if the objective theory were sound, a State can punish all offences against itself or its subjects wherever they are committed or wherever the offenders may be, and the three-mile limit would thus be unnecessary and unmeaning.

Some writers attempt to explain the practice as to jurisdiction on the high seas by means of the fiction that a ship is part of the territory of the State whose flag it flies. But this fiction is insufficient not only to explain the existing practice of a State exercising jurisdiction over its subjects in foreign vessels, but is also defective in other respects and has been rejected by eminent modern jurists. If it were sound, it would not afford countenance to either the subjective or objective theory more than to the other.

In the case of piracy, there is no State whose authority the pirates obey or profess to obey, or which can be held accountable for their acts. " A pirate either belongs to no State or organised political society, or by the nature of his act he has shown his intention and his power to reject the authority of that to which he is properly subject." (Hall, Int. Law, p. 253.) It is because the pirate belongs to no State that all States exercise jurisdiction over him; in other words, the subjective theory being admittedly

incapable of application, another theory is admitted to govern the case. And it must be noticed that the theory so admitted in the absence of the subjective, is not the objective (for States do not punish only such piratical acts as are directed against their own subjects,) but the "cosmopolitan" theory.

The principle to be extracted from the cases of *R.* v. *Satler,* (D. & B., 525,) *R.* v. *Serva* (2 C. and K., 53), and *Attorney-General for Hong Kong* v. *Kwok-a-singh* (L. R., 5 P. C., 180) as to foreigners illegally or against their will and by mere force detained on board British ships, supports the subjective theory. Referring to them, Sir James Stephen remarks: "None of them, however, is inconsistent with, and each of them more or less distinctly illustrates the proposition that protection and allegiance are co-extensive, and that obedience to the law is not exacted in cases in which it is allowedly administered, not for the common benefit of a community of which the alleged offender is for the time being a member, but for the benefit of a community of which he is an avowed and open enemy." (2, H. C. L., p. 8.)

Agreeably to the foregoing principles, an offence committed in barbarous lands not subject to the sway of a civilised or semi-civilised sovereign, would be cognizable by the State to which the offender belongs. The exceptional practice of some States, notably the United States, of exercising jurisdiction whenever their subjects are wronged, is opposed to principle and not followed by other States. When, indeed, the offender belongs to no State, as, for instance, where he is a savage, or a pirate, any State may try and punish him. As Judge *Vredenburgh* said in *State* v. *Carter,* 3 Dutch, 501 : "Where an act, *malum in se,* is done in solitudes, upon land where there has not yet been formally extended any supreme human power, it may be that any regular Government may feel as it were a divine commission to try and punish. It may, as in cases of crime committed in the solitudes of the ocean upon and by vessels belonging to no government, *pro hac vice,* arrogate to itself the prerogative of omnipotence and hang the pirate of the land as well as of the water."

In semi-barbarous lands which have a sovereign nominally at least exercising jurisdiction within them, it is universally recognized that that sovereign has jurisdiction over the subjects of foreign

civilised States within them. But by treaties and capitulations with European States, the jurisdiction over such subjects is conceded to the States to which they respectively belong, who exercise it through Consuls. Great Britain has, for instance, made such treaties with the Sultan of Zanzibar and the King of Uganda. The principle of the co-extensiveness of protection and allegiance was, in *Queen-Empress* v. *Montopoulo*, (I. L. R., 19 B., 741,) applied so as to give the British Consular Court at Zanzibar jurisdiction over a Greek subject resident there, who fell within the class known as "British-protected persons." On the other hand, it was held in *Imperatrix* v. *Juma*, I L. R., 20 B., 54, that the Uganda British Consular Court had no jurisdiction over a German subject for acts done by him outside Uganda. Among European States, Turkey, Roumania and Servia are the only ones which have made capitulations with other States conceding to the latter all civil and criminal jurisdiction over their subjects (Hall, Int. Law, p. 55.) There is thus nothing in this practice which is opposed to the subjective territorial theory.

An interesting question, which I have not yet dealt with, is, where offences by omissions are to be deemed to be committed. Sir James Stephen dismisses it as a speculative puzzle not worth discussion (2 H. C. L., 10). But I believe the previous discussion will supply us with a clue to the proper solution of this question. According to the principle therein sought to be maintained, the place where the offender is at the time of the omission is the place which will have jurisdiction. Thus, where a husband living in England intentionally lets his wife in France die for want of proper attention, he is triable for the homicide in England and not in France. In *Siddha* v. *Biligiri*, (I. L R., 7 M., 354,) it was held, on the same principle, that where *B* having contracted in foreign territory to labour for *S* in British territory, broke his contract and was arrested in foreign territory and brought into and prosecuted in British territory, the Court had no jurisdiction. In *Gregory* v. *Vadakasikangani* (I. L. R., 10 M., 21), on the other hand, it was held that where *V* having received an advance of money from *G* contracted to labour for him in foreign territory, broke the contract and was prosecuted, it was held that the British Court had no jurisdiction, presumably as the contract had to be performed outside of British India. In *Queen-Empress* v. *Paranga*,

(I. L. R., 16 M., 468,) it was held that a British Indian Magistrate had not power to summon a witness to appear before him at a place outside British India, and that even if he had, the offence would have been committed in foreign territory over which a British Indian Court would have no jurisdiction. The latter two cases are thus opposed to the principle enunciated above, and cannot therefore be accepted in preference to the first. Inconveniences might sometimes arise by a rigid adherence to this principle in the case of omissions. A person, for instance, is subpœnaed in British India to appear as a witness before a Court on a certain day. Some time before that day, he goes out of British India and returns some time after. When he is out of British India, he lies under no obligation to attend in pursuance of the subpœna, and, on the above principle, will be punishable for the omission to attend, neither in British India nor outside it. The subpœna may thus be easily evaded. Other instances also may be imagined. Such cases, if they do not fall within the principle already referred to of asserting jurisdiction over offenders going abroad to evade a home law, may be provided for by conferring upon the aggrieved State jurisdiction to try them by means of treaties.

Next, as to the second part of our subject:—the grounds of jurisdiction as between different Courts within a State; and this need not detain us long. Primarily these Courts exercise jurisdiction on the same principles as States. But in their case, legislation is often and very usefully employed to give concurrent jurisdiction to other Courts. The dangers which have been pointed out of giving more States than one jurisdiction over an offence do not exist in the case of concurrent jurisdiction by more Courts than one of the same State. The common sovereign may be trusted to regulate their exercise of jurisdiction so as to prevent any indecent haste to seize and exercise jurisdiction, and to secure that a judgment of conviction or acquittal in one Court shall be a bar to proceedings in any other Court.

In India, for instance, Ss. 177, 179—185, and S. 188 of the Criminal Procedure Code lay down the place of trial of an offence. With regard to these sections, the caution already given, namely, that they merely serve to regulate existing, and not create any new, jurisdiction, should be borne in mind. S. 177 says that every offence shall ordinarily be tried by the Court within whose jurisdiction the offence was committed. By S. 179, an offence made up of anything which has been done and any consequence which

has ensued, may be tried either where such thing has been done or such consequence has ensued. Murder, for example, may be tried either where the wound is given or the death takes place. The instigation of a person to commit an offence by means of a posted letter may be tried either where the letter is posted or is received (*Queen-Empress* v. *Sheo Dial Mal*, I. L. R., 16 A., 389). Where a girl was sold at Mirzapore to a prostitute who took her to Benares, the possession of the girl at Benares was not a consequence constituting the offence of "buying a minor with intent that she shall be employed for purposes of prostitution" so as to give jurisdiction to the Benares Court (*Mussamat Jowalur*, 6 Agra, 46.) In the revised Code of this year (Act V of 1898), a new illustration has been added to this section which apparently seeks to overrule the cases already cited, which lay down the rule of interpreting these sections as merely regulating existing, and not as creating any new, jurisdiction. I have elsewhere (The Calcutta Weekly Notes, 1898, p. cxx.) endeavoured to show that this attempt is not only to be deprecated but is actually *ultra vires* of the Indian Legislature. To this section, I would suggest the adding of a clause to the effect that an offence of omission may be tried either where the offender is at the time of his guilty omission or where the act for the omission of which he is liable, ought to have been performed. By S. 180, accessories before or after the fact may be tried either where their accessory acts of abetment, etc., took place or where the principal offence was committed. In the new Code, a provision has been added to S. 181, making the offences of kidnapping or abduction triable either where the person kidnapped or abducted was kidnapped or abducted or was conveyed, concealed or detained. By S. 183, offences committed during a journey or voyage may be tried by any Court through whose jurisdiction either the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed during the journey or voyage. 'Journey' here means a continuous journey from one terminus to another, so that where the journey was interrupted at Allahabad and an offence committed there it was held that the Magistrate at Howrah had no jurisdiction. *In re Hiramun Ayah*, 21 W. R., 64. And the offence should have taken place while the journey was going on. Therefore, where the journey had so far as regarded the offender ended at an intermediate place, neither the fact that the original journey extended as far as Madras, nor that the offender subsequently came up to that place, could give the Madras High Court jurisdiction (*R.* v. *Malony*, 1 M. H. C., 93). S. 188 provides

that a Native Indian subject for any offence outside British India, and a European British subject and a servant of the Queen (whether a British subject or not) for any offence in the dominions of any Native Prince or Chief in India may be tried as if it had been committed at any place in British India where he may be found. The provision about servants of the Queen has been introduced for the first time by Act V of 1898, to remedy the defect which was brought to light by the decision of the Bombay High Court in *Empress* v. *Natwarai* (I. L. R., 16 B., p. 178), and to which attention was drawn in the first part of this article. There are also certain special provisions in special Acts like the Railways Act, which are in *pari materia*, and will be found collected in the note to S. 177 in Sir Henry Prinsep's Code of Criminal Procedure.

By the common law of England, the different counties stood to each other like different countries. This was carried so far that if a felony begun in one county was completed in another, the felon could not be tried in either. (Lacey's Case, cited in the first part of this article). But now, by 7 Geo. IV, c. 64, S. 12, felonies or misdemeanours committed on the boundary of two or more counties, or within 500 yards of any such boundary, or begun in one county and completed in another, may be dealt with in any of the said counties. The section applies to offences which are local in their nature, such as burglary, as well as to larcenies and other transitory felonies. (*R.* v. *Ruck*, 2 Rus. Crimes, 5th Edn., p. 46.) But it does not extend to trials in limited jurisdictions but only to county trials. (*R.* v. *Welsh*, 1 Moody C. C., 175.) Thus, where a wound was given within the Admiralty jurisdiction and the death took place in a county or *vice versâ*, the section would not apply. This case is now provided for by 24 and 25 Vict., c. 100, S. 10, to which reference has already been made. With regard to accessories also, the counties, in the eye of the common law, stood to each other as different countries. In the quaint language of the preamble to 2 and 3, Edw. VI., c. 24, "it is a common practice amongst errant thieves and robbers in the realm, that after they have robbed or slain in one county, they will convey their spoil or part thereof so robbed and stolen unto some of their adherents into some other county . . . . . who knowingly receiveth the same, in which case, although the principal felon be after attainted in one county, the accessory escapeth by reason he was accessory in another county, and that the jurors of the said other county by any law yet made can take no knowledge of the principal attainder

in first county." (Steph. H. C. L., Vol. I, p. 277.) But now, by 24 and 25 Vict., c. 94, S. 7, where any felony shall have been wholly committed in England or Ireland, accessories, before or after the fact, to such offence, may be tried by any Court having jurisdiction to try the principal felony or by a Court having jurisdiction where the accessory acts are committed; and in all other cases, such accessories may be tried either by a Court having jurisdiction to try the principal felony or by a Court having jurisdiction where they shall be apprehended or be in custody. By 24 and 25 Vict., c. 96, S. 114, the offence of larceny may be tried either where the thing was stolen or was possessed by the thief; and the offence of receiving stolen goods either where the offender shall receive or have such goods, in the same manner as if they had been originally stolen or taken in that place. Again, by 2 and 3 Vict., c. 82, S. 1, offenders in a detached part of a county, surrounded in whole or in part by another county, may be committed for trial, tried, convicted and sentenced in the latter county. By 7 Geo. IV., c. 64, S. 13, offences committed on persons or property in coaches employed in journeys or in vessels employed in inland navigation may be tried in any county through any part whereof, such coach or vessel shall have passed in the course of the journey or voyage. But the offence must be committed 'in or upon' the coach or vessel, so as to bring it within the section; hence, where a guard of a coach, on changing horses near Penrith, carried a parcel to a privy, and, while there, took two sovereigns from it, it was held the section did not apply (*R.* v. *Thorpe,* 2 Lew. C. C. 233.) By 38 Geo. III., c. 52, and 14 and 15 Vict., c. 55, S. 19, where an offence is committed within the county of any city or town corporate, the prosecutor may prefer his bill of indictment to the jury of the county next adjoining, and Justices of the Peace are required to commit for trial to the Court of Oyer and Terminer and gaol delivery for the same county. By the Merchant Shipping Act of 1894, S. 686, offences within the Admiralty jurisdiction may be tried by any Court within Her Majesty's dominions within whose jurisdiction the offender may be found.

Similar provisions may be found in the legislation of other civilised countries.

M. A. TIRUNARAYANACHARI.

TRANSLATED FROM THE VIVADARATNAKARA.

CHAPTER XXIV.

On the Adopted Son.

On this subject, Vishnu says: "The adopted son is the eighth in rank. He belongs to him to whom he is given by his mother or father."(1) *Commentary.*—After 'yasya' the word 'syāt' (belongs) is understood.

Manu says: "He whom his mother or his father affectionately gives with water in times of distress, being equal in caste, is considered the adopted son. The adopted son of a man possessed of all good qualities takes all his wealth, though come from another *gotra* (family). An adopted son shall not take the family name or the wealth of his natural father. The *pinda* follows the family name and estate and the funeral rites of one who gives his son in adoption cease in regard to that son."(1) *Commentary*—'In time of distress' means 'when the adopter has no son.' 'Sadrisam' means 'equal in caste.' Medhātithi, however, says that the equality contemplated is not one in respect of caste but one in respect of qualities worthy of the family. 'Affectionately' means 'without coercion, etc.' 'Qualities,' *i.e.*, caste, learning, behaviour, etc. Seeing that the adopted son is heir by the very fact of his being a son, the qualification about his possessing good qualities is to entitle an adopted son of good qualities to share in the inheritance even in the event of the subsequent birth of an *aurasa* son and also to indicate that the adopted son devoid of good qualities will, under similar circumstances, be entitled only to maintenance. 'Gotra' means 'the celebrated family name derived from sages, such as Kasyapa, etc'. As the offering of *pinda* always follows the family name and wealth, it also ceases. The word 'Svādah' denotes 'sraddha and other rites.'

Vasishtha says: "The son, formed of seminal fluids and of blood, proceeds from the mother and the father (as an effect from its cause). The mother and the father have power to give, to sell and to abandon him; but let him not give or receive an only son; for he should remain for the continuation of his ancestors' line. Let not a woman either give or receive (a son) without her

(1) Manu, Chap. IX, 168, 141 and 142.

husband's permission. One desirous of adopting a son shall invite his relatives, inform the king, make burnt offerings in the middle of his house, reciting the *vyahritis* and adopt one not a remote kinsman, than whom no nearer exists. If doubt arise, he shall set the remote kinsman apart like a Sudra. It should be well-known that through one he saves many."(1) *Commentary*—'Sale' and 'abandonment' are not allowed like gift. Sale is permitted only in distress; and abandonment in case of inability to maintain. Prakâsakâra says that the desertion of issue is an offence, as the offering of *pinda* and libations of water will cease. The father and the mother have each individually the power to give, with this difference: that if the father be alive the mother could give only with his permission and in his absence, even without his permission. 'Invite his kinsmen,' *i.e.*, in order that the adopted son may receive his share, assemble his own *sapindas*. 'Adurabāndhavam' means 'whose relatives, such as the maternal uncle, etc., are near the spot.' This is enjoined in order that his name, caste, etc., may be learned. In the absence of his relatives, learn his name, *gotra*, etc., by some other strong evidence and adopt. The word '*eva*' has the force of 'even.' If after taking in adoption one whose relatives are not near, a doubt arise as to his Brahminhood, etc., then the adopter should set him apart with maintenance like a Sudra son. 'Through one he saves many' means 'by means of one son, he saves many ancestors.' The meaning, therefore, is that he should adopt one whose caste, etc., is ascertained beyond a doubt.

Here ends the chapter on 'the adopted son'.

CHAPTER XXV.

On the son bought.

On this subject, Vishnu says: "The son bought is the ninth in rank."(2)

Baudhāyana says: "The son who is purchased from his father and his mother or from either of them and received in the place of a son is called the son bought."(3)

(1) Vasishtha, Chap. XV, 1—8. (2) Vishnu, Chap. XV, 20.
(3) Baudhāyana, II, 2, 3, 26.

Manu says: "The son, equal or unequal, whom a man buys from his father and mother for the sake of having a son, is the son bought."(1) *Commentary*—'Equal,' *i.e.*, of the same caste. In default thereof, of a different caste. So says Parijāta. Prakāsakāra, however, says that although an unequal son is spoken of, one of a superior caste should not be taken as a son by one of an inferior caste, nor one of an inferior caste by one of a superior caste. He says that according to Medhátithi, the equality and the inequality is in respect of the possession of good qualities among those of the same caste.

Here ends the chapter on 'the son bought'.

CHAPTER XXVI.

On the son self-given.

On this subject, Vishnu says: "The son self-given is the tenth."(2) *Commentary*—He belongs to him to whom he gives himself.

Manu says: "The son who, having lost his parents or being abandoned by them without cause, gives himself is called the son self-given."(3) *Commentary*—'Without cause' means 'for no offence.' 'Gives himself,' *i.e.*, with the statement 'I am your son.'

Here ends the chapter on 'the son self-given'.

CHAPTER XXVII.

On the son rejected.

Vishnu says: "The son cast away is the eleventh. He is so called because he was forsaken by his father or mother (or both)."(4) *Commentary*—He belongs to him who receives him.

Manu says: "One, whom a man receives as his son after he has been deserted by both his parents or by either of them, is called the son cast off."(5) *Commentary*—'Utsrishtam' means 'abandoned.' The abandonment owing to extreme distress, inability to maintain

(1) Manu, Chap. IX, 174. (2) Vishnu, Chap. XV, 22.
(3) Manu, Chap. IX, 177. (4) Vishnu, Chap. XV, 24 and 25.
(5) Manu, Chap. IX, 171.

or from any other fault. Receives as a son and not for the purpose of feeding.

Vasishtha says: "The fifth is the son who, being cast off by his mother or father, is received as a son."(1) *Commentary*—'Fifth' here means 'fifth of the six sons of the second sort'.

Here ends the chapter on 'the son rejected'.

CHAPTER XXVIII.

On the son made.

On this subject, Manu says: "He is considered as the son made whom, a man makes his son, if equal, skilled in discerning right and wrong, and endowed with filial virtues."(2) *Commentary*—Medhātithi says that even here the word 'equal' means 'equal in quality.' 'Right,' *i.e.*, the virtue of performing the funeral rites of the deceased parents and 'wrong,' *i.e.*, their non-performance. 'Filial virtues' means 'inclination to be of service, etc.'

Baudhāyana says: "He is called the son made whom a man makes his son with his consent, being equal in caste."(3) *Commentary*—'*Sakāmam*' means 'having the desire,' *i.e.*, thinking that if he would become the other's son, the other would receive him for a son. 'Equal' means 'equal in caste.'

Yājnavalkya says: "The son made so by himself is called the son made."(4)

The same author says: "This rule laid down by me applies to sons equal in caste."(5) *Commentary*—The expression 'if there be a son of equal caste' is understood. Prakāsakāra says that in respect of the son of the maiden, the son of concealed birth, the son of the pregnant bride, and the son of the twice-married woman, their equality by caste should be calculated with reference to their begetters and not by virtue of themselves, because they do not answer to the definition of equality of caste.

Here ends the chapter on 'the son made'.

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(1) Vasishtha, Chap. XVII, 36 and 37. (2) Manu, Chap. IX, 169.
(3) Baudhāyana, II, 2, 3, 21. (4) Yājnavalkya, Chap. II, 131.
(5) *Ibid* II, 133.

CHAPTER XXIX.

The son by a Sudrā Woman.

On this point Vishnu says: "The son born of any woman whomsoever is the twelfth in rank."(1) *Commentary*—'Any woman whomsoever' means 'a Sudra woman, married or unmarried.'

Vasishtha says: "They declare that the sixth is the son by a Sudra woman."(2) *Commentary*—'Sixth,' *i.e.*, among the six sons of the second sort, but only the twelfth among all the sons, *aurasa*, etc. The expression 'they declare' indicates a variance of view. This difference of view concerns the son's right to inherit the wealth. Manu says so in respect of the son by a Sudra. The view differs, therefore, according as the son is possessed of good qualities or devoid of them.

Manu says: "The son whom a Brahmin begets through lust on a Sudra woman is a living corpse, and is, therefore, called a *Parásava*."(3) *Commentary*—'Living' because he fulfils to a small extent the desire of a man to become a father; 'corpse' because he is of poor service to his father.

Baudhāyana says: "A son begotten through lust upon a Sudra woman by a man of the regenerate classes is called a living corpse, a *Parūsava*."(4)

Again Manu says: "These eleven sons beginning with the *kshetraja* as already enumerated, the sages declare substitutes for the son to prevent the failure of rites. Those sons, who have been mentioned as sons along with the legitimate son, being begotten by others, belong to the owner of the seed from which they sprang, but not to any other."(5) *Commentary*—'Substitutes for a son' means 'substitutes for the *aurasa* and the son of the appointed daughter.' They have been declared entitled to do the duties of these in default of these, in conformity to the text of Brihaspati which follows. The reason is this: to prevent a failure of the rites, *i.e.*, for fear that the injunction that a man should beget offspring may be violated. This injunction is imperative. That the son

(1) Vishnu, Chap. XV, 27. (2) Vasishtha, Chap. XVII, 38.
(3) Manu, Chap. IX, 178. (4) Baudhāyana, II, 2, 3, 228.
(5) Manu, Chap. IX, 180 and 181.

should somehow be begotten follows from the following text. The latter half of the passage quoted by denying that these are the only primary sons indicates that these are substitutes; 'and not to any other' denotes that they are primary.

Brihaspati says: "Of the thirteen sons defined in order by Manu, the legitimate son of the body and the appointed daughter continue the line. As in default of ghee, oil is admitted by the virtuous as a substitute, so are the eleven other sons in default of the legitimate son of the body and of the appointed daughter."(1)

The Brahma Purana says: "The adopted son, the son self-given, the son made, the son bought, or the son rejected, must always be supported. They are considered to belong to a different *gotra*, unconnected by funeral cakes and continuing a different line. On birth and on death (of a kinsman) they share pollution for three days."(2) *Commentary*—By this text their liability to pollution for three days is incidentally mentioned.

Again the Brahma Purana says: "The *Parásava* sons of a Sudra are in some cases considered to be the sons of Brahmins who give food and raiment and of the owners of the soil and the seed; and so also of men of the warrior class afflicted with curse and always doomed to perish; and sometimes of men still bent on money and war."(3) *Commentary*—By this text the doubt of the non-existence of these sons is removed.

Accordingly it is said: "Where there is the legitimate son of the body or the son in the appointed daughter, these eleven sons, the *kshetraja* son and the rest, should be regarded as belonging to a different *gotra* and continuing a different line. They shall always perform the *sraddha*, etc., of their fathers, like servants."(4) *Commentary*—The word 'Putrikásuta' means 'the son in the form of the appointed daughter.' 'Kshetraja, etc.' means 'all sons, the *aurasa* and the appointed daughter excepted; where there is the *aurasa* son or the appointed daughter, the *kshetraja* and the rest only continue the line. 'Like servants' means 'from the mere obligation to do the bidding.'

(1) Brihaspati, Chap. XXV, 33, 34. (2) Cole. Dig., Vol. II, 404, CCLXXVII.
(3) Cole. Dig., Vol. II, 413, CCXCIV. (4) Cole. Dig., Vol. II, 414, CCXCV.

Again it is said: "By the rich Vaisyas, the son of concealed birth, the son of the maiden, the son of the pregnant bride, the *kshetraja* son, the son of the twice-married woman, these five sons are, for fear of the king's chastisement, shunned. The rest are sons of twice-born men."(1) *Commentary*—This text also shows that the Vaisya may have secondary sons. Thus these texts say that the Brahmin, the Kshatriya and the Vaisya may have secondary sons.

Next the following text shows how difficult it is for a Sudra dependent upon his lord to beget sons. "To the Sudras whose occupation is servitude, who live on food supplied to them by others and whose bodies exist for others' use, sons could never be born."(2)

In reply to the question whether a son is never born of one of the servile class it is answered: "If from such a servant, whether man or woman, a son is born, that son is himself a servant."(3) *Commentary*.—The meaning is that the son so born is himself dependent on his lord and is never independent in the discharge of his duties as a son.

Here ends the chapter on 'sons by a Sudra woman.'

CHAPTER XXX.

On the Inquiry into Sonship.

On this subject, Vasishtha says: "The wise are at variance on the question; some say that the son belongs to the owner of the soil, and some, to the begetter."(4)

Âpastamba says: "Carefully watch over your wives, lest the seeds of strangers be sown on your soil. The son belongs to the begetter. So far as the next world is concerned, the husband makes such children worthless."(5) *Commentary*—'Apramattah' means 'without inattention.' 'Tantum' means 'male issue.' 'Vapsyuh' means 'be sown.' Lest others' seeds be sown upon the soil. 'Begetter,' *i.e*, the owner of the seed. After 'belongs to' the word 'benefits' is understood. '*Sâmpârâyâ*' means 'in respect of benefits relating to the other world.' 'Mogham' means 'fruitless.'

Again it is said: "Ancient sages in the hymns sung by the God of the Wind say that a man should not sow his seed on the soil of

(1) Cole. Dig., Vol. II, 414, CCXCVI.
(2) Cole. Dig., Vol. II, 414, CCXCVII.
(3) Cole. Dig., Vol. II, 414, CCXCVII.
(4) Vasishtha, Chap. XVII, 6.
(5) Âpastamba, II, 6, 13, 7.

another. As the arrow aimed by one in the air at a deer already hit by another is wasted, so is the seed of one when sown upon another's soil."(1) *Commentary*—The arrow aimed by one at an object through the hole made by another's arrow is wasted. The game has been declared to belong to that other.

Again it is said: "As a perfect man consists of his wife and his issue, so it has been declared that the wife is one with the husband."(2) *Commentary*—As a perfect man includes himself, his wife and his issue, so the wife includes herself and her husband. Even if she were sold, she would not become another's wife. When sold or abandoned, it is said: "The wife is not released from her tie to her husband even by sale or by abandonment."(3) *Commentary*—'Nishkraya' means 'sale.' 'Visarga' means 'abandonment.'

Again it is said: "As with cows, camels, female slaves, goats, ewes and milch-buffaloes, it is not the begetter that owns the offspring, even so it is with the wives of others. Those, who having no field have seed and sow it in another's soil, shall never receive any benefit from the crop which they produce. If (one man's) bull beget a hundred calves on another's cows, they would belong to the owner of the cows and the bull would have spilt its blood in vain. Similarly, the seed of men, who having no ownership in the soil sow it upon the soil of others, benefits the owner of the soil; the owner of the seed reaps no benefit."(4) *Commentary*—The same author on a thorough consideration of the Srutis elaborates the point in the following text:—

"Where no agreement respecting the crop is made between the owners of the soil and the seed, the benefit evidently belongs to the owner of the soil; the receptacle is more important than the seed."(5) *Commentary*—Where the owners of the soil and of the seed do not both exist, then the crop belongs to the owner of the soil and not to the owner of the seed. The author renders this point clear by the following text:—

"If the seed carried by water or wind germinates in the soil of a man, the crop belongs to the owner of the soil, and the owner

(1) Manu, Chap. IX, 42—43. (2) Manu, Chap. IX, 45.
(3) Manu, Chap. IX, 46. (4) Manu, Chap. IX, 46—51.
(5) Manu, Chap. IX, 52.

of the seed receives no benefit."(1) *Commentary*—Similarly the soil is the more important in the case before us. 'Oghah' means 'a flowing stream.' 'Ahritam' means 'carried.'

The author thus concludes: "This should be understood as the law regarding the offspring of cows, mares, female slaves, camels, she-goats and ewes, birds and milch-buffaloes."(2) *Commentary*—'This law,' that is, that the owner of the seed does not receive the benefit.

Sankha and Likhita say: "When seed is sown upon one's soil without his knowledge, the crop certainly belongs to him."(3)

Gautama says: "The son begotten upon another's wife is not entitled to a share."(4)

When speaking of *Niyoga*, Gautama says: "(She shall bear) not more than two (sons). The issue belongs to the begetter in default of a special agreement. If begotten on the wife at the request of the husband living, it belongs to the husband; if by a stranger, to the begetter. But being protected by the husband, it belongs to him; or to both the begetter and the husband of the wife."(5) *Commentary*—The husband authorising his wife to raise offspring for him shall not allow her to beget more than two sons, such as a third, and so forth. If she begets more, they belong to the begetter. In default of a special agreement, all the issue belong to the owner of the soil. The issue begotten on the wife of a man who is incompetent to procreate, though it be the third, belongs to the husband of the wife even without a special agreement. If the owner of the seed maintains the wife, then the first issue belongs to the owner of the seed, and if the husband protects her, to him. Where both are desirous of offspring, then the offspring belongs to both. This is the meaning.

Nārada says: "No crop can be produced without soil; nor can there be a crop without seed. The issue therefore belongs by right to both the father and the mother."(6)

Sankha and Likhita say: "The Veda declares that the issue always belongs to the husband of the mother. Some sages say that

(1) Manu, Chap. IX, 54.
(2) Manu, Chap. IX, 55.
(3) Not found.
(4) Gautama, Chap. XXVIII, 23.
(5) Gautama, Chap. XXVIII, 8—14.
(6) Narada, Chap. XII, 59.

it belongs to both and celebrates both with the same *pinda*."(1) *Commentary*—'Dvyāmushyāyana' means 'belonging to two fathers.' 'Anumantrayate' means 'celebrates both fathers with the same *pinda*.'

They quote the following: "Of Vasishtha and Kasyapa who were under water, one gets out of the water and begets issue, being unknown to the world." *Commentary*—'Udāvasāt' means 'from his residence under the water.' *One of them begets an issue* upon the wife of the other.

If it be asked what follows from this, it is replied, "Thus both of them have issue in two ways."

"The following is another peculiarity; for following the custom of the family of one of them, taking his wealth and offering him the *pinda*, they also offer the *pinda* to the begetter, although begotten upon another's soil." *Commentary*—'Parigrahah' means 'observance'; 'Riktha' means 'taking of wealth.' Having offered the *pinda* and water to one of them, *i.e.*, the owner of the soil, they offer *pinda* and water also to the begetter, though begotten upon another's soil.

Here ends the chapter on 'the inquiry into sonship.'

S. SITARAMA SASTRI.

NOTES OF INDIAN CASES.

Visvalinga Pillai v. Palaniappa Chetti, I. L. R., 21 M., 1. We doubt the correctness of the decision of the learned Judges in this case. The mortgagee is to be in possession for three years and to pay himself both principal and interest out of the usufruct. We do not see why it does not fall within the definition of a usufructuary mortgage. It does not seem to us necessary to constitute a usufructuary mortgage that any portion of the mortgage money should be payable on the date of redemption. Again the learned Judges held that, on the lapse of the three years, the mortgagor can recover in ejectment although the mortgagee has not been placed in possession of a portion of the mortgaged property. It appears to us that when the mortgagor failed to put the mortgagee in possession of the whole, the mortgagee became entitled to recover the portion of the mortgage money which remained unpaid out of the usufruct under S. 68. It seems to us there is no justification for restricting

(1) Not found.

the scope of S. 68 to cases where any portion of the mortgage money is repayable under the contract. The language of S. 68 is general. The mortgagee is entitled to either of two remedies, namely, the profits of the property not placed in possession or the balance of the mortgage money which remained unpaid out of the usufruct. Before redemption, the mortgagor is bound to pay the sum so received.

Theyyavelan v. Kochan, I. L. R., 21 M., 7. It may be that the decision in this case is not open to exception. But the principle laid down by *Davies* and *Boddam*, JJ., that although a suit will not lie under S. 317, C. P. C., against a certified purchaser, it will lie against a person claiming by purchase from the certified purchaser appears to be questionable. We can see nothing in principle in support of the view of the learned Judges, though the section has been the subject of much judicial comment and not a few conflicting decisions. It appears questionable whether the further limitation imposed in this case upon the scope of the section is right. The section no doubt speaks of the suit against the certified purchaser alone and does not speak of a suit against persons claiming under him; while as regards the plaintiff suing it speaks of the real purchaser and of the persons claiming under him. We do not think that we can attach any weight to this difference, as the assignee cannot fail to have the rights of the assignor unless the assignment was a fraud upon the rights of others.

Krishnan Nambiar v. Kannan, I. L. R., 21 M., 8. We must take exception to the soundness of the decision in this case. In every sale after the Transfer of Property Act of immoveable property, a covenant for title is implied. We cannot agree that such implied covenant is a contract in writing registered. When the Limitation Act speaks of a contract in writing registered, it refers to that term, the breach of which is sued for as in writing registered. The question is not whether the implied covenant is part of a contract, but whether that portion of the contract is in writing.

Nayinappa Chetti v. Chidambaram Chetti, I. L. R., 21 M., 18. The view of the Madras High Court that notwithstanding a decree for redemption and default in executing the decree, it is open to the mortgagor to bring a fresh suit for redemption as upon a subsisting mortgage has been more than once criticised by us as unsound. Unless the Privy Council overturn the course of decisions in this Presidency, we must take this principle as practically settled. But it does not necessitate the conclusion that none of the questions decided in the previous suit for redemption has the force of *res judicata* in the subsequent suit.

It would seem to us absurd to suppose that the decision in the previous case as regards the terms of the mortgage relation or the amount due under the mortgage should be the subject of fresh litigation between the same parties.

Sami Ayyangar v. Ponnammal, I. L. R., 21 M., 28. *Subrahmania Aiyar* and *Benson*, JJ., declined to depart from the rule laid down by the Privy Council that there must be an antecedent debt to justify a sale of ancestral property by a Hindu father even if there was no family necessity. The Calcutta High Court no doubt suggested that the debt was always antecedent to the suit and the sale asked for in it and, therefore, a compulsory court-sale of the son's interest also was justifiable in every case of a fathers' debt. However desirable it may be to get rid of refined distinctions on the subject, there does not appear to be sufficient warrant for whittling away the language used by the Privy Council.

Bojjamma v. Venkataramayya, I. L. R., 21 M., 30. The point involved in this case is one of considerable importance but we can hardly congratulate the Judges upon the judgment they have delivered. The question is not free from difficulty as appears clearly from the opposite view taken by two other learned Judges. Whether in a suit upon a promissory note the defendant can plead that the payee was only a benamidar is a question that ought to have been decided upon the language of the Negotiable Instruments Act and not upon the mere assertion that a promissory note is a different thing from land. Why the same principle does not apply in a suit upon a note requires explanation. Reference is made to suits on contracts, but we do not know whether it will be said that in a suit upon a bond the defendant cannot plead that the plaintiff was only a benamidar. Nor does it appear to follow that in a suit by a stranger upon a bond claiming to be really the person entitled though not the obligee named, the defendant can defeat the claim of the plaintiff, not being the person named in the bond. The same question, we ask, with regard to similar suits on a promissory note. The answer appears to us to depend on a consideration of the language of the Negotiable Instruments Act; and if this be the correct view the argument cannot apply to suits upon a bond.

Achuta Menon v. Achutan Nayar, I. L. R., 20 M, 35. We are unable to agree with the decision of the learned Judges in this case, that where a plaintiff sued as lessee from the Zamorin to eject the defendant and withdrew his suit without leave, he could not afterwards maintain another suit upon a fresh lease from the Zamorin. We are unable to think that the fresh suit for the same matter referred to in-

S. 373, C. P. C., refers to suits upon a fresh cause of action which did not arise at the time of the former suit. We are also of opinion that there is misapprehension as to the meaning of the phrase 'fresh' cause of action.' None of the decisions referred to appears to us to support the decision of the learned Judges. Supposing the former suit to have been tried and dismissed on the ground that the first lease was untrue, there would be nothing to preclude a second suit upon the new lease. Stress is laid upon the words '*for the same matter*,' but, we think, the learned Judges are bound to concede that if the new suit is brought upon a new title, say, gift or bequest, a title, be it assumed, which was not available as a ground of attack at the time of the former suit, a new action will lie. Surely the case of withdrawal cannot be put upon a higher footing.

SUMMARY OF RECENT CASES.

Married Woman—Separate estate—Restraint on anticipation.

Lady Bateman *v.* Faber [1898, 1. Ch. 144, C. A.]

Under the English Law the married woman seems to have been given greater protection than even an infant, so much so, that it has been held that even fraud or estoppel could not deprive her of the protection which her separate property enjoys when it is restrained from anticipation. The plaintiff, a married woman, was entitled under a settlement to property called Kil-Marsh estate for her life, for her separate use, without power of anticipation. The settlement contained a provision that if at any time she should come to an income, in her own right, of £8,000 or more per annum, for her separate use, then the trust under settlement should cease, and the property be held in trust for her husband. In order to assist her husband in coming to some arrangements with a creditor of his, she executed an instrument in which she stated she had succeeded to the estate of £8,000 and that her life interest under the settlement had ceased. On the faith of this statement the creditor entered into an arrangement with the husband for his benefit. The wife, however, subsequently sued to receive the income of the property for her life, notwithstanding her admission. The Court of Appeal affirming the decision of *Kekewich*, J. (1897) 2 Ch. 223, held that she was not estopped from receiving the income. The Master of the Rolls (*M. R. Lindley*) said "it is new in point of detail, but in principle it is very old. A married woman cannot by hook or by crook, by any device, even by her own fraud (the cases go that length) deprive herself of the

protection which the restraint on anticipation throws around her. About the policy of the law we say nothing, but it has been sanctioned by the "Married Woman's Property Act."

Trade name—Fraud.

F. Pinet & Cie. *v.* Maison Louis Pinet, Limited. [1898, I. Ch. 179, per *North*, J.]

A man can have under the law any name he pleases, only he ought not to so use the name as to pass himself off for another or his goods for those of another. He may also change his name how often so ever he likes and there is nothing to prevent him from doing so, but if he changes his name for a fraudulent purpose, he will be absolutely prohibited from using the name in the business in connection with which he intended the fraud.

L, a solicitor, took the name of Pinet and commenced business as maker of boots and shoes. He then sold his business to a limited Company called Maison Pinet, Limited, formed for the purpose of taking over and carrying on that business. The plaintiffs were a firm of boot and shoe manufacturers of Paris called S. Pinet and Company and had a large business in London. They had brought an action against the company Maison Pinet and Co., and got an order restraining the defendant from using the name Pinet in connection with the sale or manufacture of boots and shoes, without distinguishing their articles from those of the plaintiff. Subsequently, however, that company went into voluntary liquidation and transferred its assets to another company Maison L. Pinet, Limited, of which L. was a director. The plaintiffs brought the present suit to prevent the defendant company from using the word Pinet at all in connection with their trade. There was no evidence in the former action that the defendant Pinet had ever borne another name. In the present action, however, it was proved that the defendant had adopted the name Pinet for the very purpose of passing off his boots and shoes for those of the plaintiff's manufacture. Upon these facts *North*, J., issued an injunction perpetually restraining the defendant absolutely from using the name Pinet in any manner of connection whatsoever with his manufacture and sale of boots and shoes.

Conspiracy—Malicious wrong—No action for conspiracy unless it is to do a wrongful act.

Huttley *v.* Simmons and others, [1898, I, Q. B. D., 181; *Darling, J.*]

The House of Lords decided in *Allen* v. *Flood* [1898, A. C., p. 1] that the existence of a bad motive in a person in the case of an act which is not of itself illegal, will not convert that act into a civil wrong for which reparation may be due. In delivering their judgments several members of the House had expressed a doubt whether the law may not be different in the case of a combination of persons with a bad motive. The present case was exactly such a case, but *Darling*, J., has ruled that a conspiracy with a bad motive will not make any difference in the law, unless it be to do act in itself unlawful. The plaintiff, a cab driver, sued S and others for damages sustained by him in consequence of the defendants having induced Y, a cab proprietor, to refuse to engage the plaintiff to drive a cab for him, or to let a cab to the plaintiff to be so driven. The jury found that defendants had conspired together and done this act maliciously in order to injure plaintiff and procure some advantage to a third person. The presiding judge non-suited the plaintiff and held that a conspiracy to do certain acts (not being criminally punishable) gives a right of action only where the acts agreed to be done, and, in fact done, would, had they been without preconcert, have involved a civil injury to the plaintiff.

International law—Action by foreign sovereign—Cross-proceedings.

South African Republic *v.* La Compagnie Franco Belge, &c., [1898, I, Ch. 191, per *North, J.*]

The plaintiffs, a foreign sovereign state, entered into a contract with the defendants by virtue of which large sums of money were deposited in the names of two persons, one the nominee of the Government and the other of the defendants, for the purpose of being utilized in the construction of a Railway. Disputes soon arose as to the proper application of these funds, the two nominees not agreeing as to *modus operandi*. The nominee of the Government died and the funds then survived to the nominee of the defendants. The plaintiff then brought a suit in Courts of England against the defendants and the banks where the money had been deposited for the appointment of a new trustee of the fund and to restrain the defendants from dealing with the fund. The defendants set up a cross-claim for damages for breach of certain concessions made by the

plaintiff. *North, J.*, struck off the cross-claim. He held that a foreign sovereign, because he submits himself as plaintiff to the jurisdiction of our Courts with respect to one matter, cannot be made a defendant with respect to another and quite a distinct matter. There may be a proceeding against a foreign Government plaintiff by way of counter-proceeding, by cross-bill, a bill of discovery—it might be either a bill of discovery, if necessary, or a cross-bill—in the nature of a defence to the proceedings set up by the plaintiff; but not a proceeding setting up against the sovereign another claim in respect of another and entirely distinct matter.

JOTTINGS AND CUTTINGS.

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State Library Bulletin of New York, Legislation No 9.

General Digest, American and English, Quarterly Advance Sheets, with supplement for January 1898, published by *The Lawyer's Co-operative Publishing Company, Rochester, N. York*, single number $ 1. $ 4 a year (*in exchange.*)

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Succession of Cognates under the Mitakshara:—We draw the attention of our readers to the very able article on this subject from the pen of "Jurisprudence" which appeared in the February number of this Journal and which is continued in this issue. The question as to who are heritable *bandhus* has been very ably examined by the learned author, and we hope to refer to the question ourselves on some future occasion.

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A convicted murderer's anxiety;—The announcement comes from St. Louis that a convicted murderer there, who is to be executed this week, has been negotiating with a local medical college, with reference to the sale of his body to the institution. In this State the Penal Code

expressly declares that a person has a right to direct the manner in which his body shall be disposed of after his death. Whether this applies to one convicted of murder, however, may be somewhat doubtful, in view of the provisions of law relating to the body of a criminal upon whom the death penalty has been inflicted. Such body, unless claimed by some relative or relatives of the person so executed, is required by the Code of Criminal Procedure to be interred in the graveyard or cemetery attached to the prison, with a sufficient quantity of quicklime to rapidly consume the remains.—*The Albany Law Journal.*

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The Evils of Dissenting Opinions:—There never should be a dissenting opinion in a case decided by a court of last resort. No judge, lawyer or layman should be permitted to weaken the force of the court's decision, which all must accept as an unappealable finality, The decision should be that of the court, and not of the judges as individuals. The judges should get together and render a decision settling the points in controversy. The decision rendered should not reflect the opinion of this judge or that judge, but should be the opinion of the court.

If I were a candidate for a position, what possible good could it do to tell me "You are elected, but three members of the Board of Directors voted against you," or if I applied to a bank for a loan, to tell me that I could have it, but two of the discount committee voted against the loan because they doubted my solvency? In effect the courts say to a suitor, "We decide for you, but two or three judges still think you are wrong."

Dissenting opinions may be as pleasant to the minority judge as it is for a boy to make faces at a bigger boy across the street, whom he can't whip. They give a judge an opportunity of exhibiting his individual views and opinions. But what good does that do? What cares the public for the judge's individual views, except in so far as, by reason of his position, they assume the force of law? The only concern of the public is with the decision of the court as a court, so that they may know what it is, and know how to govern themselves.

The curtain should not be raised to present the disagreeable picture of family discord and want of harmony.

It is a maxim of the law that it is to the interest of the public that there should be an end to litigation. It certainly is to the interest of the public that when a question is settled by the highest tribunal, it should remain settled for all time. The result of a dissenting opinion

is simply to open up for future discussion, bickering and litigation the question which should then be finally settled by that tribunal. Somebody must settle the question; it must be settled somewhere; that tribunal has been selected as the final arbiter, and when it once settles it, it should remain settled for ever.

If a dissenting opinion is well written it impresses not only the particular litigant, but all who read it, with the idea that injustice has been done by the courts; a feeling of dissatisfaction arises, a feeling of great wrong is cast broadcast. The court has been weakened in popular esteem, for in the opinion of the reader of the dissenting opinion it has lent itself to injustice and inflicted wrong.

A dissenting opinion is to some extent an appeal by the minority—from the decision of the majority—to the people. What can the people do? They can't alter it; they can't change it; right or wrong; they must respect and obey it. Why shake the faith of the people in the wisdom and infallibility of the judiciary? Upon the respect of the people for the courts depends the very life of the Republic.

If nothing else is accomplished, one good result at least would surely follow the abolition of dissenting opinions—the opinion of the court would be shorter and more concise, stating in plain English the points decided, and succinctly the reasons therefor—, for all the judges being responsible for it, would see that it was not filled with obscure illustrations and be clouded with alleged reasons of doubtful logical force. If we had shorter opinions, the judges would have time to write better ones.

Nothing of any benefit to the public can be gained by a dissenting opinion.—*The Albany Law Journal*.

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Some stories of Lord Russell:—One of the greatest jurists at present living is Charles Russell, the lord chief justice of the Queen's Bench. Lord Russell is not only an Irishman, but an eminent lawyer, a world-famous orator and a wit of no small dimensions. Many stories are told illustrative of his skill at that most difficult of arts—repartee.

Once, it is told, when he was pleading in a certain case, he was constantly annoyed by being interrupted by the counsel for the other side Sir Digby Seymour, At last, losing all patience, Russell broke out in his strong Irish brogue: "I wish you wouldn't interrupt so much, Sir Digby Saymour." "My name is Seymour, not Saymour," answered Sir Digby, sharply. "Well then," rejoined Russell, "you should see more and say less."

On another occasion, when he was visiting this country, he was walking beside the Potomac river one day with William M. Evarts, who was then Secretary of State. When they arrived at a certain part of the river Mr. Evarts paused. "This," said he, "is the place where George Washington threw a dollar across the Potomac." "Oh," responded Russell, "that must have been quite an easy task for a man who cast a sovereign over the Atlantic."

But the last of these stories will, perhaps, be best appreciated by my legal readers.

A young lawyer was one day making a plea before Lord Russell. It was late in the afternoon, the hour for adjournment was fast approaching, and the young barrister, anxious to finish before closing time, was hurrying along as best he could. Suddenly he spoke of 2 Q. B. D. Lord Russell interrupted him sharply. "You forget yourself, sir," he said sternly. "You forget yourself. That is no way to address this court." The tyro was profuse in apologies, and explained that he only meant to refer to 2 Queen's Bench Division of the Law Reports. But the chief justice refused to be appeased. "Why," he cried, "I might as well say to you, U. B. D."—*The Calfskin.*

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Legal Laughs.

"Gentlemen of the jury," said the lawyer impressively, "our defense is insanity. I shall show that my client once served on a jury and listened to expert testimony for four months."

Of course he was acquitted.—*The Albany Law Journal.*

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"And where was the man stabbed?" asked the excited lawyer of a physician.

"The man was stabbed about an inch and a half to the left of the medial line, and about an inch above the umbilicus," was the reply.

"Oh, yes, I understand now; but I thought it was near the town hall."—*The Albany Law Journal.*

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Legal Education in the Continent and America.

We take the liberty of extracting the following from an article that appeared in the Law Magazine and Review on "The Faculty of Law in a Teaching University" by Montague Crackanthorp, Q. C. D. C. L.

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"I begin with Germany, because in that country education is more completely organised than in any other part of the globe. In the German empire there are twenty Universities, all supported by the State, yet all to a great extent self-governing. Each comprises four Faculties—Philosophy, Theology, Medicine, and Law. These Faculties are the avenues to the various learned professions, as well as to all the State offices. No one can matriculate at a German University who has not gone through a course of secondary education either at a classical *gymnasium*, or at a *real gymnasium* or *real schule* (these two last corresponding to the "modern side" of our English public schools). Now in the German University—I take Prussia as typical of the rest—the law student attends lectures on the philosophy of law, on the foundation of legal principles, on the history and theory of legal conceptions, such as the family, contract, succession at death, and so forth. This is termed the "philosophical course," and is gone through by way of introduction to the course in professional law of which there are quite as many as with us. The subjects of the first set of lectures I shall hereafter indicate by the general phrase "theoretical law," to distinguish them from the subjects of the second. Roughly speaking, by "theoretical law" I mean that which forms a necessary part of a wide, liberal education and without some knowledge of which a man does not feel perfectly at home in the society of well-educated people. By "professional law" I mean such technical knowledge as no layman need blush for being without. Obviously the two run into each other. But the broad distinction between them is clear enough.

German law teaching has one special feature which is worth while recording here, since it has been bound peculiarly efficacious for furthering habits of reflection and stimulating original thought. I allude to the *Seminar*, of which the following description is taken from an eye-witness:—The *Seminar* meets every week in a special chamber more convenient and more elegant than the ordinary lecture-room. There are two long tables and one short cross table, in the centre of which is the Professor's seat. The students come in one by one, salute each other ceremoniously, according to German fashion, and take their customary seats, each having behind him a drawer or cupboard where he can place his books and manuscripts. The Professor enters, having in his hand a treatise composed by one of the pupils on some subject which the Professor has given out. This he has already carefully read and annotated, in order that he may discuss it with the class. He begins by pointing out its literary merits and defects. He then indicates the sequence of ideas and provokes a debate on moot points.

There is no desultory talk, no unnecessary interruption. What is new in the law is illustrated by what is old, both historically and philologically. So completely arrested is the attention of the pupils, that, although the *Seminar* lasts two hours, there is no sign of fatigue or impatience on their part.

In Prussia, the legal *Seminar* comprises three sections, viz., Roman, German and Canon Law. A student wishing to become a member presents himself beforehand to the Professor, who ascertains by personal inquiry whether he is sufficiently equipped to benefit by it. Once admitted, a new relation of an intimate kind is established between the master and the pupil, reminding one of that which subsisted in ancient Rome between the patron and the client. The pupil has the privilege of seeking the master's advice, in and out of University hours, as often as he reasonably requires it.

A word or two as to University examinations in Germany. Of these there are two kinds—academic and State. The former qualify for the doctor's degree, which is the only passport to professorial rank; the latter qualify for the learned professions. The academic examination in law is conducted by two legal practitioners, in conjunction with two members of the University teaching staff. To them is added a Magistrate or Judge, whose office is mainly nominal, but who has a casting vote in the event of an equal division of opinion as to the merits or demerits of a candidate. The form of this examination resembles that for the doctor's degree in our own ancient Universities. It consists of two parts, the first being the composition of a treatise on some branch of law chosen by the candidate himself, the second being an oral examination in all branches of the law and also in political economy. The oral examination often lasts four or five hours, and is a most effective engine for detecting and checkmating *cram*.

France, like Germany, only opens the door to the higher education through its secondary schools (*lycées, colléges communaux*). But there the parallel ends. Whereas in Germany the *gymnasium* is only a preparation for the University, which alone confers a diploma or degree (usually at the age of 25), a diploma of the nature of a degree may be obtained in France at a *lycée* or a *collége* by a lad of 18. Again, in France until very recently, there were no Universities at all. There were only Faculties, consisting of Professors appointed by the State with a titular dean (*doyen*) at their head. Moreover, these Faculties were not self-governing like the German Universities. They were merely subordinate parts of an elaborate machinery (*L'Université de France*) designed by the First Napoleon as a means of centralising State control.

The French Faculties of Law concerned themselves exclusively with the professional training of *avocats* and *avoués*, these being, as with us, separate limbs of the same body. Of theoretical law, as I have defined the term, there was next to none. Everything was sacrificed to practice.

So matters stood down to the Franco-German War. But *fas est et ab hoste doceri.* Since then a great change has taken place. Chairs of public law (national and international) have been founded. The philosophy and history of law, comparative law, and the theory of legislation, have been made separate subjects of instruction. In short, the French have for the last quarter of a century been remodelling their educational system upon German lines. Finally, a decree of 1896 has put the coping stone on the educational edifice by incorporating each local group of Faculties into a distinct University. The ideal for which Guizot, Cousin, and Taine so long and so powerfully laboured has thus at last been realized.

In Belgium, the demand for legal educational reform has been of late years even brisker than in either of the countries just mentioned. It began in 1894 with a resolution passed by the Brussels Junior Bar (the *jeune barreau belge* is a wonderfully energetic body), demanding that legal teaching should be made more scientific, and that this should be accomplished by University teaching and University examinations. As a consequence of this resolution, a Special Commission was appointed in 1895. It recommended that, in addition to strictly professional subjects, the following should form part of the legal curriculum—psychology and moral philosophy, logic, philosophy of law, elements of the history of law, elements of the history of philosophy—these to be compulsory. It further recommended that there should be optional examinations in literature, natural science, elements of political economy, history, modern languages (especially English and German), and Latin philology. Truly a formidable list! What will be said to it by the Inns of Court student whose tests in general culture are confined to a knowledge of his own tongue, of a little Latin prose, and a little English history?

To complete the general survey it remains to glance at the state of legal education on the other side of the Atlantic.

There are in America no less than 137 Universities and institutions (without reckoning the Law Schools, properly so-called, as to which a word presently) where theoretical law is taught. Early in the present century the Corporation of Yale College, Connecticut, voted the

establishment of a Professorship of Law, the design of which was "to furnish lectures on the leading principles of the Law of Nature and Nations, on the general principles of Civil Government, particularly of Republican Representative Government, on the Constitution of the United States, on the various obligations and duties resulting from the social relations between National and State Governments." In 1826, the friends of Chancellor Kent established at Yale the Kent Professorship of Law which embraces National, International, Constitutional and Municipal Law, and such other subjects of jurisprudence as the Corporation of the College shall from time to time approve. This Professorship was at one time held by Mr. E. J. Phelps, whose recent official sojourn in London is associated with such pleasant memories for many of us.

As a practical illustration of the way in which historical jurisprudence is taught in an American University, it is worth while to quote from the evidence given by Mr. G. H. Emmott, Professor in that department at the John Hopkins' University, Baltimore, before the Gresham Commission :—

"It is usual for the men who work with me to make their main study in the field of history. They usually in that way select history as their principal subject; historical and comparative jurisprudence as their first subordinate subject; and very frequently political economy as their second subordinate subject. They then write a thesis on some special topic of history; for instance, a thesis that I have in mind at the moment relates to the early English manor. That is a thesis written by a man who took history as his principal subject and made a special study of the old English manor from such documents as he has access to on our side of the Atlantic. When he came to the end of his three years, he would be examined in the whole field of history, but naturally with special relation to such particular department as he had studied. He would be examined in the history of principles of Roman law, the general history of the English common law, and a knowledge of the leading statutes, and he would also be examined in the more general principles of political economy."

Here again, as in the German *Seminar*, is scope for original work. What, I repeat, does the Inns of Court student say to it?

Of American Law Schools, properly so-called, there are now 81, numbering upwards of 10,000 students. Of these schools, some 68 are connected with Universities. The earliest American Law School was established in Litchfield, Connecticut, in 1784. The next in point of date was the Harvard Law School at Cambridge, Massachusetts, which

was opened in 1817. Here it was that Mr. Justice Story began to lecture in 1829, and to him and to his successors in the same chair we are indebted for many valuable contributions to our legal literature.

The American Law Schools did not for some time attempt to teach theoretical law, but quite recently a movement has displayed itself in favour of their doing so. This is due to the efforts of a Committee of the American Bar Association which, in 1891, recommended that wherever a longer course of study was possible, provision should be made there for courses in general jurisprudence and public law, and that students should be required, in addition to the usual course in private law, to pursue at least a certain number of subjects in public law, international law, the history and theory of law, comparative jurisprudence, and the science of government.

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Law Lectures—Their value and the secret of their success.

Before leaving the subject of teaching by lectures—of which in my time I have had some experience both as lecturer and lecturee—I should like to say a few words upon what appear to me to be their real value and what the secret of their success. The late Lord Coleridge (amongst others) was of opinion that to attend a lecture was no better than to read a text-book; indeed, he thought it was not so good, because you could look back at a book and, if need be, make a mark in it, whereas he maintained that if you listened to a Professor and once began to think, you were in danger of missing the next point. The same thought is expressed in the epigram (I think of Schleiermacher), "that Professors are the only men who dare to ignore the invention of the art of printing." For my part, I do not agree with these wholesale strictures. To any one who, for the first time, approaches so complex a subject as law, its field seems entirely beyond his grasp. The office of the lecturer is to take him by the hand and guide him across the undiscovered country. Text-books (and there are many excellent ones) no doubt do this in a measure, but a book is a dead abstract thing; a lecture is, or should be, something living and growing. Of course, there are lectures and lectures. There are men with great learning who will always fail to hold an audience. There are men with not much learning, but with an attractive personality, who will always succeed in doing so.

A lecturer, whatever his subject, should not read from a manuscript. Although his discourse should never be impromptu, he should contrive to give it that air. A few notes, indeed, he should have before

him, for they will prevent him going astray. But, provided he is master of his subject, this is all the written aid he requires, and all of which he should avail himself. Again, a lecturer should be on his guard against a too rapid delivery. He should allow his audience time to think, bearing in mind that what is familiar to him is, probably wholly new to them. The most effective oral lecture I ever attended, when I was an undergraduate at Oxford, was delivered on a branch of Moral Philosophy by a very original thinker, who hesitated and stumbled over his words in a most surprising way. I can even at this distance of time recall the vision of the Professor struggling to express the thoughts within him, and so magnetic was his power, that I felt myself struggling too. That lecture I never forgot, for when I left the class-room I felt as if I had given it myself.

Another point to be noticed about lectures is that the audience should be dissuaded from taking copious notes whilst the lecture is proceeding. At most they should jot down a few catchwords in order to aid the memory. Mr. W. Blake Odgers, in his evening lectures on libel, adverted to in a note on a previous page, improved on this idea. When he entered the class-room on his opening night he found there about a hundred students, armed with pens, ink and paper, ready to take down as much as possible of what he was about to say. His first sentence rather astonished them. He requested them to put all this apparatus on one side and to give him their undivided attention. They would find, he said, no note-making necessary, for at the close of the lecture he would hand to each of them a printed *résumé* prepared by himself which they would find much more accurate than any they could make on the spur of the moment.

As an alternative to a formal lecture, it will be found useful occasionally to expound cases decided by the Courts. The teacher selects from the Reports some well-known authority illustrative of a legal principle, he examines the arguments *pro* and *con*, and occasionally appeals to the class to know how they would themselves decide it. Sometimes, to make the appeal more forcible, he asks for a show of hands in favour of the plaintiff and defendant respectively. The system of teaching by "Cases" is a favourite one in America, and Mr. Justice O. W. Holmes, who occasionally acts as Harvard Professor, is one of its warmest supporters.

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The conclusions to be drawn are, I venture to think, these :—

1. That theoretical or non-professional law should, in accordance with the practice of other nations, be taught in England both as part of a liberal education and as introductory to, and closely connected with, technical or professional law.

2. That theoretical law is not at present adequately taught by the Inns of Court, and by reason of the strictly professional character of those Inns, cannot be so taught.

3. That, to remedy this defect, it is expedient that a Faculty of Law should be established in London as part of a Teaching University, and that such Faculty should teach both non-professional law so far as the latter is capable of being taught by lectures and classes.

4. That with regard to so much of professional law as can only be learnt by actual contact with business, a probationary system, modelled on the lines of the Continental *stage* should be set on foot by the Inns of Court or the General Council of the Bar, or by both conjointly.

5. That, to avoid the multiplication of tests, the Faculty of Law in the Teaching University should recognize and give full effect to examinations *in pari materia* held and passed in any other University within the British Dominions.

6. That the Inns of Court and the Incorporated Law Society should be properly and adequately represented on the proposed Faculty of Law and the other Councils of the University, and should, in return, contribute to the funds of the University, according to their means.

7. That the privileges and powers both of the Inns and of the Law Society, as licensing and disciplinary authorities, should remain unaffected by the proposed reform, the object being not to curtail, but to enlarge the dignity and usefulness of those important bodies.

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The Late Sir Frank Lockwood:—Some six years ago a man and his wife sued an omnibus company for £500 in respect of injuries caused to the wife by the neligence of one of the company's servants, and the case was presented to the jury in a grossly exaggerated form. The evidence of special loss or expenses was exceedingly vague and slight, but the husband declared that his wife, who was a very fat woman, weighing some fifteen stones, had prior to the accident weighed eighteen stones. It appeared at the hearing that, immediately after the accident, the husband had written to the company alleging that his wife's injuries would

certainly prove fatal, and claiming £50 compensation, a proposal which the company declined to entertain. Lockwood, for the defendants, went to the jury in this strain:—"I will spare you further trouble in this matter, gentlemen, by at once accepting the plaintiffs' estimate of any damage they may have sustained. The case, you will perceive, resolves itself into an application of the principle known, I believe, to arithmeticians as the rule of three. Its operation here is very simple. When the husband regarded the accident as certain to prove fatal he claimed, as we find, £50—that, you will observe, was as for a 'total loss.' His wife—at any rate the bulk of her—has fortunately been spared to him, and she apparently enjoys, at the present time, the most robust health, though her spouse complains that, whereas she formerly scaled eighteen stones, her weight has now been reduced to fifteen—a loss of three stones avoirdupois. The problem for you to solve, therefore, stands thus: As eighteen is to three, so is £50 to the amount of your verdict. With the assistance of my learned junior I am able to propound as a solution of the problem—£8 6s. 8d. But, as my clients have throughout desired to deal with the plaintiffs in a more liberal spirit than you will probably consider they deserve, let us say in round figures £10." The Judge was highly amused, and briefly intimated that the question was eminently one for the jury, who promptly stated that they accepted "Mr. Lockwood's figure of £10":—*The Law Magazine and Review.*

REVIEWS.

The Principles of the Law of Sedition, by J. Chaudhuri, M.A., Bar.-at-law, published by *The Weekly Notes Printing Works, Calcutta*: Price Rs. 1:—This little book is practically a reproduction of the various articles which appeared in the *Calcutta Weekly Notes* during the time of the introduction of the Sedition Bill in the Imperial Legislative Council. They were much appreciated at the time as embodying most thoughtful utterances upon the subject. The book contains an exposition of the English law of sedition and a discussion of the law in force in this country before and after the passing of the Sedition Act. A cursory reading of the book will convince any reader that the law has been seriously altered to the prejudice of the subject and that the alteration is at variance with the spirit and letter of the English legislation. It is much to be regretted that the responsible members of the Government in this

country lost their heads over a trifling incident and made an enormous change in the law almost in a state of panic, forgetting the far-reaching consequences of such mischievous legislation. If the affections of the people have at all been alienated, statesmen of a future age will find that the press prosecutions and sedition legislation have been more responsible than anything else for that result. We congratulate Mr. Chaudhuri on the publication of this little book.

The Law of Meetings, by George Blackwell, LL.B., published by *Butterworth & Co.*, 7, *Fleet Street, London, E. C.*, Price, s. 2-6 :—This is a useful little publication. We feel sure that the various public bodies in this country, such as Municipal Councils, Local Fund Boards and Devastanam Committees, will derive considerable assistance from the book. To the practising lawyer, however, it is much too meagre to be of much service. We expected to find a statement of the principles of the common law with regard to the procedure of meetings. The decisions passed in England with reference to special statutes, unless there is an exposition of the principles of the common law which may be supposed to underlie the provisions of the special enactments in this country, are not likely to be of much use. We may, however, confidently recommend a study of the book to a member of any of the public bodies above mentioned.

The Presidency Small Cause Courts Act, by C. V. Visvanatha Sastri, B.A., B.L., and K. Krishnamachari, B.A., B.L., published by the *Vaijayanti Press, Mount Road, Madras.* Price, Rs. 1-8 :—This is a very unpretentious commentary and should prove of use to practitioners in the Small Cause Court and the High Court. The case-law is noted up carefully and with a considerable amount of conciseness. The typography and get-up do credit to the *Vaijayanti Press.*